

FIRST REGULAR SESSION

# SENATE BILL NO. 700

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR LUETKEMEYER.

2470S.02I

KRISTINA MARTIN, Secretary

## AN ACT

To amend chapter 537, RSMo, by adding thereto one new section relating to a cause of action against private contractors for conditions of public property.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Chapter 537, RSMo, is amended by adding thereto  
2 one new section, to be known as section 537.655, to read as  
3 follows:

537.655. 1. A statutory cause of action for damages  
2 for personal injury or death arising out of the repair or  
3 construction of a public highway or road against a private  
4 contractor, or employee of such private contractor, acting  
5 within the course and scope of a government contract with a  
6 public entity is hereby created and replaces any such common  
7 law cause of action. The elements of such cause of action  
8 are that the public highway or road was in a negligent,  
9 defective, or dangerous condition at the time of the injury  
10 or death, that the injury or death directly resulted from  
11 the negligent, defective, or dangerous condition, that the  
12 negligent, defective, or dangerous condition created a  
13 reasonably foreseeable risk of harm of the kind of injury  
14 which was incurred, and that either a negligent or wrongful  
15 act or omission of the private contractor, or an employee  
16 thereof, within the course and scope of a government  
17 contract for repair or construction of the public highway or

18 road created the negligent, defective, or dangerous  
19 condition.

20 2. In any action brought pursuant to this section  
21 where a plaintiff alleges that he or she was injured by the  
22 negligent, defective, or dangerous repair or construction of  
23 a public highway or road, the private contractor, or any  
24 employee of a private contractor, shall be entitled to an  
25 affirmative defense to liability, and there shall be a  
26 complete bar to recovery whenever the private contractor, or  
27 employee thereof, can prove by a preponderance of the  
28 evidence that the alleged negligent, defective, or dangerous  
29 repair or construction reasonably complied with highway or  
30 road standards and regulations of the United States  
31 Department of Transportation and of the Missouri department  
32 of transportation at the time that the public highway or  
33 road was repaired or constructed and that the repair or  
34 construction by the private contractor, or employee thereof,  
35 was within the course and scope of a government contract.

36 3. (1) In any action brought pursuant to this section  
37 against a private contractor, or an employee of the private  
38 contractor, for damages for personal injury or death arising  
39 out of the repair or construction of a public highway or  
40 road, the liability of a private contractor, or an employee  
41 of the private contractor, shall not exceed two million  
42 dollars for all claims arising out of a single occurrence  
43 and shall not exceed three hundred thousand dollars for any  
44 one person in a single accident or occurrence. If the  
45 amount awarded to multiple claimants exceeds two million  
46 dollars, any party may apply to any circuit court to  
47 apportion to each claimant his or her proper share of the  
48 total amount limited by this subsection. The share  
49 apportioned each claimant shall be in the proportion that

50 the ratio of the award made to the claimant bears to the  
51 aggregate awards for all claims arising out of the accident  
52 or occurrence, but the share shall not exceed three hundred  
53 thousand dollars.

54 (2) No award for damages in any action brought  
55 pursuant to this section against a private contractor or an  
56 employee of the private contractor for damages for personal  
57 injury or death arising out of the repair or construction of  
58 a public highway or road shall include punitive or exemplary  
59 damages.

60 (3) The limitation on awards for liability provided  
61 for in subdivision (1) of this subsection shall be increased  
62 or decreased on an annual basis effective January first of  
63 each year in accordance with the Implicit Price Deflator for  
64 Personal Consumption Expenditures as published by the Bureau  
65 of Economic Analysis of the United States Department of  
66 Commerce. The current value of the limitation shall be  
67 calculated by the director of the department of commerce and  
68 insurance, who shall furnish that value to the secretary of  
69 state, who shall publish such value in the Missouri Register  
70 as soon after each January first as practicable, but it  
71 shall otherwise be exempt from the provisions of section  
72 536.021.

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